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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1938.

No. 20

J. O. STOLL,

Petitioner,

vs.

WILLIAM GOTTLIEB,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

RESPONDENT'S PETITION FOR REHEARING

MAY IT PLEASE THE COURT:

Your petitioner, William Gottlieb, hereinafter referred to as Respondent, begs and prays that a rehearing and a reconsideration may be granted in the above entitled cause on the following grounds:

I.

The record clearly shows that there was not an actual determination and adjudication of the question of jurisdiction by the Bankruptcy Court.

1. This Court misconstrued the record before it.

This Court erred in determining that the proceedings in the Bankruptcy Court was *res judicata* as to bar an

action by respondent upon the guaranty. The opinion in substance is based upon an application of the *principle of estoppel by judgment* to a record which could not warrant such application. The opinion is based entirely on the assumption that there were findings of the question of jurisdiction which is an obviously erroneous construction of the record.

This court concludes its opinion by stating that "we base our conclusion here on the *fact that in an actual controversy the question of the jurisdiction over the subject matter was raised and determined adversely to the respondent.*" (Italics ours.) In order to arrive at this fact, this court had to go beyond the record itself and imply a state of facts that does not exist. If this court would give further consideration to the state of the record, we feel its conclusion would be otherwise.

Just as this court failed to express an opinion as to whether the Bankruptcy Court did or did not have jurisdiction over the subject matter of the guaranty, the Bankruptcy Court itself failed to express an opinion one way or another or to expressly find that it did have jurisdiction to cancel the guaranty. The record substantiates this assertion.

2. The trial court found that the question of jurisdiction was not expressly adjudicated and determined in the Bankruptcy Court.

The trial court, in finding the issues of fact for respondent and against the guarantor, *found as a matter of fact* that there was no *actual* controversy on the question of jurisdiction over the subject matter in the Bankruptcy Court and that that particular question was not fully and fairly investigated, tried and determined adversely to the respondent. *Cooper* v. *Newell*, 173 U. S.

555, 565. *Respondent never admitted at any time* that this question was determined. *Evidence* of these matters was offered by the respondent and *guarantor* and after both parties rested the trial court found that the guarantor did not prove his plea. (Rec. 17.) The burden was on him to prove the estoppel. *Kelliher* v. *Stone & Webster*, 75 F. (2d) 331 (distinguishing *res judicata* and estoppel by judgment).

The guarantor did not stand on his Amended Defense as he elected to do in order to test the legality of his plea. (Rec. 16.) Instead he filed a second Amended Defense setting forth the proceedings in the Bankruptcy Court had upon Respondent's petition, the Debtor's answer thereto, he not being a party therein, and order entered. (Rec. 16.) The Guarantor requested and had a trial of the matters set up in his second Amended Defense and the trial court found that the *question of jurisdiction was not expressly decided in the Bankruptcy Court at any time.* That it was decided was not proved by extrinsic evidence which is permissible. *Packet Company* v. *Sickles*, 5 How., 580, 590, 592; *Russell* v. *Place*, 94 U. S. 606.

3. It does not appear upon the record or by extrinsic evidence that respondent had a finding of the question of jurisdiction determined adversely to him—this should not be left to conjecture.

From the record in this case, which is the only proper proof of the Bankruptcy Court's decree (*Packet Co.* v. *Sickles, supra*) the proceedings taken by respondent in the Bankruptcy Court could not constitute an estoppel nor should the order denying Respondent's petition constitute *res judicata*. *Chapman* v. *Phoenix Nat'l Bk.*, 85

N. Y. 537, 452. *The guarantor was not a party to that proceeding nor did he appear therein.*

The order denying the petition was merely a decision of a motion or summary application which is not to be regarded in the light of *res judicata*, or so far conclusive upon the respondent as to prevent his drawing the same matter in question again in the more regular form of an action. *Hill* v. *Wampler*, 298 U. S. 460; *Denny* v. *Bennett*, 128 U. S. 489. 499. A trial upon which nothing was determined, the merits not being inquired into, (the court simply denying the respondent's petition) cannot support a plea of *res judicata* or have any weight of evidence at another trial *Manhattan Life Ins. Co.* v. *Broughton*, 109 U. S. 121, 125. Although the latter case concerns a judgment upon a non suit, the principles are applicable.

There is no evidence in the record that the Bankruptcy Court denied respondent's petition, *because of a finding that it had jurisdiction and this fact cannot be implied although the point might have been raised.* Respondent has never admitted this fact. The previous adjudication of a Supreme Court of Alabama upon the meaning of a statute did not estop the State, in a subsequent proceeding against the same defendant from denying the constitutionality of the statute nor conclude the court upon that question *although the point might have been raised and determined in the first instance.* *Boyd* v. *Alabama*, 94 U. S. 645. To the same effect is *Ver Mehren* v. *Sirmyer*, 36 F. (2d) 876.

The order denying the petition (Rec. 38) *might have been based on various other reasons.* The proof to show an estoppel by judgment and the evidence must be *clear, certain and convincing.* *De Sollar* v. *Hanscome*, 158 U. S. 216, 221. In this state of the record there is an uncer-

tainty as to the precise questions raised and determined in the Bankruptcy proceedings and it does not appear upon the record or by *extrinsic evidence*, that Respondent had a finding of the question of jurisdiction determined adversely to him at any time. (R. 35.) *This cannot be left to conjecture. Russell* v. *Place*, 94 U. S. 606, 608. *Any uncertainty as to what was determined in the Bankruptcy Court should be resolved against the guarantor.*

In the last mentioned case, this Court stated on page 610:

> "According to Coke, an estoppel must 'be certain to every intent,' and if upon the face of a record anything is left to conjecture as to what was necessarily involved and decided, there is no estoppel in it when pleaded, and nothing conclusive in it when offered as evidence."

4. It does not appear upon the record or by extrinsic evidence that any bondholder had a finding of the question of jurisdiction determined adversely to him—this should not be left to conjecture.

The certified copy of the decree of the Bankruptcy Court confirming the plan of reorganization set forth that the Court "finds" *that no objections have been made to the Plan of Reorganization filed herein by the debtor.* (R. 14, 29.) The trial court, in finding the issues against the defendant guarantor found this fact to be true that the Bankruptcy Court did not expressly pass on this question of jurisdiction at any time during the *reorganization proceedings because* the question of jurisdiction, as an objection, was never brought to the court's attention by other bondholders. *The record is clear and unambiguous on this point.* Moreover, if objections were made, the record does not show the reasons nor any findings of jurisdiction in overruling them.

5. It does not appear upon the record or by extrinsic evidence that respondent did have "his day in court" in the Bankruptcy Court.

While the enforcement of the rule of *res judicata* is essential to secure the peace and repose of society, it is equally true that to enforce the rule upon *unsubstantiated grounds* would work injustice to respondent. This court must therefore be careful to see that the questions of respondent's right to sue upon, or the question to cancel the guaranty were *adjudicated* and *decided* and the rights of the respondent thereby concluded. *Vicksburg* v. *Henson*, 231 U. S., 259, 268.

The doctrine of *res judicata* and estoppel by judgment rests upon a sound foundation of justice but if this Honorable Court's judgment is permitted to stand, respondent will never be able to obtain justice. *He has never had his "day in court," and the record bears this out.* (R. 35, 38.) His right to sue upon his contract of guaranty which has always been held inviolate, will have been denied if this court's judgment is permitted to stand. Furthermore, on the principle that estoppels must be mutual, no person is entitled to take advantage of a former judgment or decree, as decisive in his favor of a matter in controversy (if one can call the proceedings cancelling the guaranty a *controversy*) unless he would have been prejudiced by it had the decision been the other way. 2 Black on Judgments, Sec. 534.

6. Forsyth v. Hammond, 166 U. S. 506, distinguished.

This case and the one at bar may be distinguished. In the cited case, the *highest court* of the State of Indiana, in a *final appeal*, held that the lower court had jurisdiction over the subject matter. In that case *there was an*

actually contested issue of want of jurisdiction in all of the state courts and a finding in a matter that was peculiarly within the domain of State control, to be finally and absolutely determined by the State Supreme Court. In this case, there is *no evidence of an actually contested issue* as to jurisdiction (R. 14, 29, 38) and there is no collateral attack upon the finding of a *highest* nor even a lower tribunal in a matter to be finally and absolutely determined by that court.

II.

The record did not preclude the Supreme Court of Illinois nor does it now preclude this Court from inquiring into the question of jurisdiction for proper determination.

1. This Court should clarify the law and settle litigation involving the same questions in lower courts.

The opinion does not discuss or decide the question of the power of the Bankruptcy Court to cancel a Guaranty in proceedings to reorganize a debtor corporation under Section 77B of the Bankruptcy Act.

We know of important litigation in the lower courts depending on the question of the power to cancel the Guaranty and involving similar facts. We believe such litigation will be confused and petitions for certiorari invited by this court's evasion of the primary and principal issue so rightfully presented. The question is squarely and simply presented in this case and we believe that a discussion of it and a decision would clarify the law, settle litigation and save time of the courts, including this court.

2. The Supreme Court of Illinois found that neither the record nor extrinsic evidence sustained a finding of the question of jurisdiction.

The Supreme Court of Illinois found that as a matter of law the plea of *res judicata* as set forth in the record was bad not only because the Bankruptcy Court lacked jurisdiction to cancel the guaranty, but also, *the plea as a matter of fact was not proved in the trial court.* The Supreme Court of Illinois found that no objections to the plan cancelling the guaranty had been made. (R. 64.) Guarantor's contentions were before the Supreme Court of Illinois at all times. Therefore, if there was no finding that the Bankruptcy Court did or did not have jurisdiction to cancel the guaranty, it was within the province of the Supreme Court of Illinois to decide as it did. A court's jurisdiction can always be *inquired* into when the issue is raised for the first time in a collateral proceeding, the issue not having been actually litigated and determined in the Bankruptcy Court. (R. 67.)

3. As a matter of law and in all fairness and justice, respondent should not be barred merely because the Bankruptcy Court signed the decree confirming the plan of reorganization and denied respondent's petition to modify same.

Respondent begs the Court's indulgence to permit him to quote the following case at such length as is necessary to show the application thereof to this case *if it can be assumed that the record did show that respondent's petition in the Bankruptcy Court was denied because the court did actually find thereupon or at any time that it had jurisdiction to cancel the guaranty.*

In *Vallely* v. *Northern Fire Insurance Co.*, 254 U. S. 348, an insurance corporation was adjudged bankrupt in

an involuntary proceeding upon due service of process and default. *The corporation did not appeal from the adjudication but acquiesced therein and even aided the trustee. After time for appeal had expired,* the corporation moved successfully in the Bankruptcy Court that the adjudication should be vacated and proceedings dismissed because the court lacked jurisdiction to adjudge an insurance company a bankrupt. It was held therein that even *after the time* for appeal had expired, the corporation is not estopped from thereafter questioning the validity of the adjudication and the power of the court; *there cannot be res judicata or estoppel if the court has no jurisdiction even though the parties consented to the adjudication and order.*

It may be argued that this case can be distinguished because the motion to vacate was made in the Bankruptcy Court and was therefore a direct attack. *In substance,* this case involves a *collateral attack* on a prior bankruptcy adjudication in another bankruptcy court inasmuch as the time for appeal had expired.

Mr. Justice McKenna, in the opinion of this court stated on pages 353 and 354:

> "It is, however, insisted * * *. 'if the court in the exercise of its jurisdictional power, reached a wrong conclusion, the judgment is not void; it is merely error to be corrected on appeal or by motion to vacate, timely made, but as long as it stands, it is binding on everyone.' There is plausibility in the propositions taken in their generality, but there are opposing ones. Courts are constituted by authority and they cannot go beyond the powers delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal."

In looking at the bankruptcy provisions pertinent to this case, this Court goes on to say on page 355:

> "The effect of these provisions is that there is no statute of bankruptcy as to except corporations, and necessarily there is no power in the District Court to include them. In other words, the policy of the law is to leave the relation and remedies of * * * insurance * * * corporations to their creditors and their creditors to them, to other provisions of the law. * * *
>
> If consent can confirm jurisdiction, why not initially confer jurisdiction? * * * *For a court to extend the act to corporations of either kind is to enact a law, not to execute one.*" (Italics ours.)

The Bankruptcy Court here by extending Section 77B to cancel the guaranty enacted a new law.

In following principles laid down in the Vallely case (*supra*), this Court in *Chicago Life Insurance Co.* v. *Cherry*, 244 U. S. 25, 29; *Tilt* v. *Kelsey*, 207 U. S. 43, 51; and *Andrews* v. *Andrews*, 188 U. S. 14, 16, 17, 38, held that a court cannot conclude all persons interested by its *mere assertion of its own power* even where its power depends upon a fact *and it finds that fact.* See *Chapman* v. *Phoenix Nat'l Bk.*, 85 N. Y. 437, 452.

PRAYER.

In view of the fact that this Court possibly has inadvertently overlooked the matters hereinabove pointed out, petitioner, William Gottlieb, begs and prays this Court to reconsider this cause; petitioner further prays that this Court find after further consideration of the record that it had erred in finding that the record did *clearly* show that the bankruptcy proceedings were *res judicata* to petitioner's cause of action on the guaranty; your petitioner further prays that this petition for rehearing be granted and that the opinion of this Honorable Court may be set aside and declared null and void and that the judgment of the Supreme Court of the State of Illinois be affirmed.

DAVID SHIPMAN,
Counsel for Respondent,
William Gottlieb.

LEO SEGALL and
SAMUEL M. BLOOMBERG,
Of Counsel.

CERTIFICATE OF COUNSEL.

This is to certify that the above petition for rehearing is presented in good faith in the belief that petitioner, William Gottlieb, has a meritorious claim that this court's opinion is contrary to the law and facts, and is not interposed merely for the purpose of delay.

DAVID SHIPMAN,
Counsel for Respondent.

LEO SEGALL and
SAMUEL M. BLOOMBERG,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 20.—October Term, 1938.

J. O. Stoll, Petitioner,
vs.
William Gottlieb.

On Writ of Certiorari to the Supreme Court of Illinois.

[November 21, 1938.]

Mr. Justice Reed delivered the opinion of the Court.

This certiorari was allowed to review a judgment of the Supreme Court of Illinois. That court had denied effect to a plea of res judicata arising from orders of a district court in bankruptcy. Provisions declaring the supremacy of the Constitution and the extent of the judicial power and authorizing necessary and proper legislation to make the grants effective confer jurisdiction upon this Court to determine the effect to be given decrees of a court of the United States in state courts.[1] As the contention is that the ruling below disregarded decrees of a court of the United States it raised a federal question reviewable under Section 237b of the Judicial Code.[2]

The admission of facts and uncontroverted allegations of the pleadings show that Ten Fifteen North Clark Building Corporation filed a petition for reorganization on June 20, 1934, under Section 77B of the Bankruptcy Act in the United States District Court for the Northern District of Illinois; that the petition was approved as properly filed shortly thereafter, and that notice of the proceedings was given to the creditors, one of whom was respondent William Gottlieb. A proposed plan of reorganization was filed by the debtor which provided for the substitution of one share of common stock in the Olympic Hotel Building Corporation for each $100 principal amount of the outstanding first mortgage, 6½% gold

1 Crescent City Live Stock Co. *v.* Butcher's Union, 120 U. S. 141, 146; Embry *v.* Palmer, 107 U. S. 3, 9; Metcalf *v.* Watertown, 153 U. S. 671, 676; Atchison, Topeka & S. F. *v.* Sowers, 213 U. S. 55, 65.

2 Dupasseur *v.* Rocherseau, 21 Wall. 130, 134; Crescent City Live Stock Co. *v.* Butcher's Union, 120 U. S. 141, 142; Des Moines Nav. Co. *v.* Iowa Hstd. Co., 123 U. S. 552, 559; Pittsburgh, etc. Ry. *v.* Long Island Loan & Trust Co., 172 U. S. 493, 507; Motlow *v.* Missouri, 295 U. S. 97, 98.

bonds of the debtor corporation, the discharge of the bonds and the cancellation of a guaranty endorsed on them. The guaranty was one of J. O. Stoll, petitioner here, and S. A. Crowe, Jr., to pay the bond. Its material provisions are stated below.[3] The extinction of the personal guaranty was in consideration "for the transfer of all the assets of said Debtor [i.e., the Building Corporation] to the Olympic Hotel Building Corporation and the surrender of the said Common Stock of the Debtor." Crowe and Stoll, together with other stockholders of the debtor, "filed their acceptances in writing" of the plan.

On notice to respondent and a hearing at which he did not appear the proposed plan of reorganization with the provision for the extinction of the guaranty was confirmed over the objections of creditors of the same class as respondent. The confirmation provided that all creditors of the debtor should be bound. It also appears that, in accordance with the plan, the guarantors caused the assets of the debtor to be transferred to the new corporation and surrendered the capital stock of the debtor. After the institution of the present action in the state court Gottlieb filed a petition in the proceedings for reorganization of the Ten Fifteen North Clark Building Corporation praying that an order be entered vacating or modifying the decrees and orders entered in the proceedings confirming the plan of reorganization, on the ground that the district court in proceedings for reorganization did not have power or jurisdiction to cancel the guaranty. An order was entered denying this petition. No appeal was taken from any of the bankruptcy orders.

Subsequent to the confirmation of the plan of reorganization but before the petition to vacate these orders Gottlieb began an action in the Municipal Court of Chicago against the guarantors

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[3] "GUARANTY.

"For Value Received, the undersigned, Do Hereby Guarantee the payment of the within bond and the interest thereon, at the maturity thereof either by the terms of said bond or of any agreement extending the time of payment thereof, or by anticipation of maturity at the election of the legal holder or owner thereof, in accordance with any provision of said bond or of the trust deed given to secure the same, or of any extension agreement; and do hereby absolutely guarantee the payment of the respective interest coupons, given to evidence the interest on said bond, and all extension coupons, at their respective dates of maturity, and all interest on said coupons, and do hereby absolutely guarantee the full and complete performance by the maker of the trust deed given to secure the said bonds and coupons, and its successors and assigns, of all of the terms, provisions, covenants and agreements of the said trust deed and of any such extension agreement."

Crowe and Stoll to recover upon their guaranty of three of the $500 bonds of Ten Fifteen North Clark Building Corporation. Crowe was not served with summons. Stoll defended on the ground that the order of the bankruptcy court confirming the plan of reorganization with release of his guaranty and its further order, denying Gottlieb's petition to set aside the decree providing for the release of the guaranty, were res judicata.

The Municipal Court granted the relief sought by the bondholder, the appellate court reversed and its judgment was in turn reversed by the Supreme Court of Illinois which affirmed the judgment of the Municipal Court.[4] Two justices dissented.

The Congress enacted, as one of the earlier statutes, provisions for giving effect to the judicial proceedings of the courts. This has long had its present form.[5] This statute is broader than the authority granted by Article Four, section one, of the Constitution to prescribe the manner of proof and the effect of the judicial proceedings of states. Under it the judgments and decrees of the Federal courts in a state are declared to have the same dignity in the courts of that state as those of its own courts in a like case and under similar circumstances.[6] But where the judgment or decree of the Federal court determines a right under a Federal statute, that decision is "final until reversed in an appellate court or modified or set aside in the court of its rendition."[7] As this plea was based upon an adjudication under the reorganization provisions of the Bankruptcy Act, effect as res judicata is to be given the Federal order, if it is concluded it was an effective judgment in the court of its rendition. The problem before the Supreme Court of Illinois was not one of full faith and credit but of res

[4] 368 Ill. 88.

[5] Rev. Stat. Sec. 905. "The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

[6] Dupasseur *v.* Rochereau, 21 Wall. 130; Embry *v.* Palmer, 107 U. S. 3, 9; cf. Metcalf *v.* Watertown, 153 U. S. 671.

[7] Deposit Bank *v.* Frankfort, 191 U. S. 499, 520.

judicata. In this particular case, a federal question was involved. This was the power of the Federal courts to protect those who come before them relying upon constitutional rights or rights given, as in this case, through a statute enacted pursuant to constitutional grants of power.

The inquiry is to be directed at the conclusiveness of the order releasing the guarantor from his obligation, assuming the Bankruptcy Court did not have jurisdiction of the subject matter of the order, the release in reorganization of a guarantor from his guaranty of the debtor's obligations.[8]

A court does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creators. There must be admitted, however, a power to interpret the language of the jurisdictional instrument and its application to an issue before the court.[9] Where adversary parties appear, a court must have the power to determine whether or not it has jurisdiction of the person of a litigant,[10] or whether its geographical jurisdiction covers the place of the occurrence under consideration.[11] Every court in rendering a judgment tacitly, if not expressly, determines its jurisdiction over the parties and the subject matter.[12] An erroneous affirmative conclusion as to the jurisdiction does not in any proper sense enlarge the jurisdiction of the court until passed upon by the court of last resort, and even then the jurisdiction becomes enlarged only from the necessity of having a judicial determination of the jurisdiction over the subject matter. When an erroneous judgment, whether from the court of first instance or from the court of final resort, is pleaded in another court or another jurisdiction the question is whether the former judgment is res judicata. After a Federal court has decided the question of the jurisdiction over the parties as a contested issue, the court in which the plea of res judicata is made has not the power to inquire again

[8] We express no opinion as to whether the Bankruptcy Court did or did not have jurisdiction of the subject matter. Cf. In re Diversey Building Corp., 86 F. (2d) 456; In re Nine North Church Street, Inc., 82 F. (2d) 186; Union Trust Co. *v.* Willsea, 275 N. Y. 164, 167.

[9] As illustrations of the exercise of this power, see Texas & Pac. Ry. *v.* Gulf, etc. Ry., 270 U. S. 266, 274; Matter of Gregory, 219 U. S. 210, 217.

[10] Baldwin *v.* Traveling Men's Ass'n, 283 U. S. 522.

[11] Jones *v.* United States, 137 U. S. 202.

[12] Chicago Life Ins. Co. *v.* Cherry, 244 U. S. 25, 29.

into that jurisdictional fact.[13] We see no reason why a court, in the absence of an allegation of fraud in obtaining the judgment, should examine again the question whether the court[14] making the earlier determination on an actual contest over jurisdiction between the parties, did have jurisdiction of the subject matter of the litigation. In this case the order upon the petition to vacate the confirmation settled the contest over jurisdiction.

Courts to determine the rights of parties are an integral part of our system of government. It is just as important that there should be a place to end as that there should be a place to begin litigation. After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined. There is no reason to expect that the second decision will be more satisfactory than the first.

That a former judgment in a state court is conclusive between the parties and their privies in a Federal court when entered upon an actually contested issue as to the jurisdiction of the court over the subject matter of the litigation, has been determined by this Court in *Forsyth* v. *Hammond*.[15] The respondent, Caroline M. Forsyth, sought by injunction in the Federal court to forbid the City of Hammond from collecting taxes on certain lands, annexed to the city by an earlier state court decree. The city contended that the earlier decree was decisive, the respondent that it was void because the enlargement of a city was a matter of legislative, not judicial, cognizance. Without determining the issue whether annexation itself is a function solely of the legislature, this Court upheld the contention of the city on the ground that the respondent had taken an appeal to the Supreme Court of Indiana from the earlier decree of the trial court against her in the annexation proceedings, and had in that appeal attacked the validity of the decree on the ground of lack of jurisdiction. "Having litigated a question in one competent tribunal and been defeated, can she litigate the same question in another tribunal, acting independently, and having no appellate jurisdiction? The question is not whether the judgment of the Supreme

[13] Chicago Life Ins. Co. *v.* Cherry, 244 U. S. 25, 30; Baldwin *v.* Traveling Men's Ass'n, 283 U. S. 522, 525; Davis *v.* Davis, No. 16, October Term 1938, decided November 7, 1938.

[14] The Bankruptcy Court is one of general jurisdiction. Fairbanks Shovel Co. *v.* Wills, 240 U. S. 642, 649.

[15] 166 U. S. 506, 515.

Court would be conclusive as to the question involved in another action between other parties, but whether it is not binding between the same parties in that or any other forum."[16]

Other instances closely approaching the line of this case may be examined.

In *Des Moines Navigation and Railroad Company* v. *Iowa Homestead Company*,[17] this Court was called upon to resolve a controversy over the effect of a judgment of the Federal courts in a matter beyond their jurisdiction. The suit was brought by the Homestead Company in the state court to recover certain taxes which were the subject of litigation between the same parties in *Homestead Company* v. *Valley Railroad*, 17 Wallace 153. In the earlier case the decision had been adverse to the Homestead Company. When the Navigation Company pleaded the earlier decree in bar to the later action, it was met with the reply that the courts of the United States, which had rendered the earlier decree "had no jurisdiction of said suit and no legal power or authority to render said decree or judgment." The reason for this assertion was that the earlier suit had been instituted in a state court by the Homestead Company, an Iowa corporation, against various non-resident defendants and the Navigation Company, also an Iowa corporation. The individual defendants caused a removal to the Federal court and all defendants, including the Navigation Company, appeared, filed answers and defended the action. The Homestead Company likewise appeared and actually contested issues in dispute with the Navigation Company. The litigation eventually reached this Court and was decided without reference to the lack of jurisdiction. In the later case this Court assumed that the exercise of jurisdiction by the United States Circuit Court over the controversy between the two Iowa corporations was improper. It was held, however, that the earlier decree was a "'prior adjudication of the matters in controversy" and a bar to the later action.

A few years later this Court had occasion to examine again the question of the effect of a former adjudication by a United States Circuit Court in a case where this Court assumed the Circuit Court had jurisdiction of the parties but not of the subject matter. The earlier adjudication was pleaded in bar to a suit to quiet title in a state court sitting in the same state as the Circuit Court. The

[16] *Id.* 517.

[17] 123 U. S. 552.

state courts denied effect to the Circuit Court decree. On writ of error to the Supreme Court of Oregon this Court answered the contention that the ground upon which "the Federal court assumed jurisdiction was insufficient in law to make this case one arising under the laws of the United States" in these words:

"But that was a question which the Circuit Court of the United States was competent to determine in the first instance. Its determination of it was the exercise of jurisdiction. Even if that court erred in entertaining jurisdiction, its determination of that matter was conclusive upon the parties before it, and could not be questioned by them or either of them collaterally, or otherwise than on writ of error or appeal to this court."[18]

The decision in the *Des Moines* case is not precisely parallel with the circumstances of the present case because the determination was based upon diversity of citizenship between other parties to the controversy[19] and *Dowell* v. *Applegate* may likewise be seen to deviate slightly since there was color of jurisdiction in the Federal court by reason of certain allegations as to violation of Acts of Congress in the stamping of the deeds.

A case likewise closely approaching the circumstances of the present controversy is *Vallely* v. *Northern Fire Ins. Co.*[20] A corporation alleged to be engaged in the insurance business was adjudicated an involuntary bankrupt in the teeth of the Bankruptcy Act, section four b, that "any moneyed . . . corporation, except a . . . insurance . . . corporation, . . . may be adjudged an involuntary bankrupt." There was a default, acquiescence and aid to the trustee by the bankrupt. After the time for review of the adjudication had expired, the bankrupt filed a motion to vacate the adjudication as null and void. This Court upheld the motion. It was pointed out that a determination of a jurisdictional fact, such as whether an alleged bankrupt is a farmer, binds,[21] but that where there was no statute of bankruptcy applicable "necessarily there is no power in the District Court to include," the excepted corporation. It was thought that to recognize the binding effect of the judgment would be to extend the jurisdiction. This decision is inapplicable here because there was not an actually contested

[18] Dowell v. Applegate, 152 U. S. 327, 340.
[19] Vallely v. Northern Fire Ins. Co., 254 U. S. 348, 354.
[20] 254 U. S. 348.
[21] Denver First Nat. Bank v. Klug, 186 U. S. 202.

issue and order as to jurisdiction. The case is also distinguishable because the motion to vacate was made in the same bankruptcy proceeding as the order. We do not comment upon the significance of this variable.

To appraise the cases dealing with status and transfer of title to real estate seems outside the scope of the present inquiry. The rule applied here may or may not be applicable in instances where the courts with jurisdiction of the later controversy are passing upon matters of status and real estate titles.[22]

It is frequently said that there are certain strictly jurisdictional facts, the existence of which is essential to the validity of proceedings and the absence of which renders the act of the court a nullity. Examples with citations are listed in *Noble* v. *Union River Logging Railroad*.[23] For instance, service of process in a common law action within a state, publication of notice in strict form in proceedings in rem against absent defendants, the appointment of an administrator for a living person, a court martial of a civilian. Upon the other hand there are quasi-jurisdictional facts, diversity of citizenship, majority of litigants, and jurisdiction of parties, a mere finding of which, regardless of actual existence, is sufficient. As to the first group it is said an adjudication may be collaterally attacked, as to the second it may not. We do not review these cases as we base our conclusion here on the fact that in an actual controversy the question of the jurisdiction over the subject matter was raised and determined adversely to the respondent. That determination is res adjudicata of that issue in this action, whether or not power to deal with the particular subject matter was strictly or quasi-jurisdictional.

Judgment reversed.

Mr. Justice McReynolds concurs in the result.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[22] Cf. Andrews v. Andrews, 188 U. S. 14; S. C. 176 Mass. 92; Fall v. Eustin, 215 U. S. 1; Carpenter v. Strange, 141 U. S. 87, 105.

[23] 147 U. S. 165.

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